

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:
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PCT

WRITTEN OPINION

(PCT Rule 66)

Date of Mailing
(day/month/year)

01 MAY 2003

Applicant's or agent's file reference

460.1891WOQ

REPLY DUE

within 2 months/days from
the above date of mailing

International application No.

PCT/US02/15575

International filing date (day/month/year)

16 May 2002 (16.05.2002)

Priority date (day/month/year)

16 July 2001 (16.07.2001)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): B65D 51/16 and US Cl.: 220/367.1, 360; 215/11.5, 310

Applicant

PLAYTEX PRODUCTS, INC.

1. This written opinion is the first (first, etc.) drawn by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2 (a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. ~~The applicant may, before the expiration of that time limit, request this Authority to grant an extension. See rule 66.2(d).~~

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 *bis*.
For an informal communication with the examiner, see Rule 66.6

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 16 November 2003 (16.11.2003)

Name and mailing address of the IPEA/US

Commissioner of Patents and Trademarks
Box PCT
Washington, D.C. 20231

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WRITTEN OPINION

International application No.

PCT/US02/15575

I. Basis of the opinion

1. With regard to the **elements** of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
 pages 1-6 _____, as originally filed
 pages NONE _____, filed with the demand
 pages NONE _____, filed with the letter of _____.
- ☒ the claims:
 pages NONE _____, as originally filed
 pages NONE _____, as amended (together with any statement) under Article 19
 pages 7, 8, 9, 10, 10/1 _____, filed with the demand
 pages NONE _____, filed with the letter of _____.
- ☒ the drawings:
 pages 1-4 _____, as originally filed
 pages NONE _____, filed with the demand
 pages NONE _____, filed with the letter of _____.
- ☐ the sequence listing part of the description:
 pages NONE _____, as originally filed
 pages NONE _____, filed with the demand
 pages NONE _____, filed with the letter of _____.

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the written opinion was drawn on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE _____
- ☐ the claims, Nos. NONE _____
- ☐ the drawings, sheets/fig NONE _____

5. ☐ This opinion has been drawn as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."

WRITTEN OPINION

International application No.
PCT/US02/15575

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. STATEMENT

Novelty (N)	Claims <u>29-34</u>	YES
	Claims <u>1-28</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-34</u>	NO
Industrial Applicability (IA)	Claims <u>1-34</u>	YES
	Claims <u>NONE</u>	NO

2. CITATIONS AND EXPLANATIONS

Please See Continuation Sheet

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

TIME LIMIT:

The time limit set for response to a Written Opinion may not be extended. 37 CFR 1.484(d). Any response received after the expiration of the time limit set in the Written Opinion will not be considered in preparing the International Preliminary Examination Report.

V. 2. Citations and Explanations:

Claims 1-28 lack novelty under PCT Article 33(2) as being anticipated by Lucas et al. (U.S. 5,699,719). Lucas et al. teaches a vent disc 70, shown in figure 6. The vent disc is elastomeric, as stated in col. 4 lines 21-26.

Claims 1-28 lack an inventive step under PCT Article 33(3) as being obvious over Warden et al. (U.S. 5,402,908) in view of Lucas et al. Warden et al. discloses the claimed invention except for the vent disc being elastomeric. Lucas et al. teaches that it is known to provide a container with a vent disc which is elastomeric (see col. 4 lines 21-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the vent disc of Warden et al. from an elastomeric material, as taught by Lucas et al., in order to give the disc enough flexibility to allow the disc to conform to any irregular surfaces in the container wall.

Warden teaches a member for positioning a disc, shown in figures 1 and 2. The vent disc is element 16 and the projection is element 20. The disc is allowed to vent through apertures 22. The projection 20 has a rectangular shape.

Regarding claim 10, to the degree applicant's projection shown in the figures is considered to be one of cubical, ellipsoidal, and cylindrical in shape, the projection of Warden et al. is also considered to be one of cubical, ellipsoidal and cylindrical in shape, since the projection of applicant's invention and projection of Warden et al. are identical in shape.

Claims 7 and 15 --In addition, the modified invention of Warden et al. does not disclose that the hardness of the projection is about 70 durometers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified member of Warden et al. with the projection having a hardness of about 70 durometers, in order to prevent deformation of the projection when grasped by the user, and since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Claims 17-21--In addition, the modified Warden et al. does not disclose that the height of the projection is about 0.22 inches, the length of the projection is about 0.35 inches and the width of the projection is about 0.10 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified projection of Warden with a height of about 0.22 inches, a length of about 0.35 inches and a width of about 0.10 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claim 21, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the member of Warden et al. with the projection having a hardness of about 70 durometers, in order to prevent deformation of the projection when grasped by the user, and since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Claims 22-28--In addition, the modified Warden et al. invention does not disclose the plurality of projections. Warden et al. only teaches one projection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the member of Warden et al. with an additional projection, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regarding claims 23-28, it also would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the projection of Warden with a height of about 0.22 inches, a length of about 0.35 inches and a width of about 0.10 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Regarding claims 27 and 28, it further would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the member of Warden et al. with the projection having a hardness of about 70 durometers, in order to prevent deformation of the projection when grasped by the user, and since it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Claims 29-31 lack an inventive step under PCT Article 33(3) as being obvious over Warden et al. in view of Lucas et al. as applied to claims 1, 16 and 22 above, and further in view of Stull (U.S. 5,071,017). The modified disc of Warden et al. discloses the claimed invention except for the vents being resealable slits. Stull teaches that it is known to provide a disc with a resealable slit. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified disc of Warden et al. with the vents being resealable slits, as taught by Stull, in order to limit venting of the container.

Claims 1-6, 8-14, 16, 22 and 32-34 lack an inventive step under PCT Article 33(3) as being obvious over Lyons in view of Lucas et al. Lyons discloses the claimed invention except for the vent disc being elastomeric. Lucas et al. teaches that it is known to provide a container with a vent disc which is elastomeric (see col. 4 lines 21-26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the vent disc of Lyons from an elastomeric material, as taught by Lucas et al., in order to give the disc enough flexibility to allow the disc to conform to any irregular surfaces. Lyons teaches a vent disc 46 with a single projection 48. Lyons also teaches a vent disc 20 with a plurality of projections 32. The projection has a curved dome portion.

----- NEW CITATIONS -----

US 5,699,719 A (LUCAS et al) 23 December 1997, see entire document.

US 5,071,017 A (STULL) 10 December 1991, see entire document.